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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,762	07/15/2003	Takeharu Muramatsu	1254-0230P	6012

2292 7590 01/30/2007
BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER	
ST CYR, DANIEL	
ART UNIT	**PAPER NUMBER**
2876	

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	01/30/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 01/30/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No.	Applicant(s)	
	10/618,762	MURAMATSU ET AL.	
	Examiner	Art Unit	
	Daniel St.Cyr	2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 November 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *5,8,9,11 and 14-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *5,8,9,11 and 14-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This is in response to the applicant communication filed 11/30/06.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 5, 8, 11, 14, 15, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Fukuda et al, US Patent No. 5,953,290.

Fukuda et al disclose a recording medium and reproduction apparatus for displaying data synchronously with reproduction of audio data comprising: an imaging device (reading head 202) for imaging encoded data 101 including a header portion 132 and a body portion 125 (the encoded data in the body portion is audio data, it serves as ring tone data), said header portion including a data identifier indicating the type of data in the body portion; a data identifying unit (reproduction unit) that recognizes said data identifier and estimate (identifies) the type of said encoded data image by said imaging device based on said encoded data identified; and a control unit 122 that reads the contents of said encoded data in a manner suited for the type of data estimated by said identifying unit and reproduces the data (see fig. 1; col. 5, line 45+ and col. 6, line 14+).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 5, 8, 9, 11, 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al, US patent No. 5,659,167, in view of Fukuda et al. The teachings of Fukuda have been discussed above.

Wang et al disclose a visually interactive decoding of dataforms comprising: a dataform reader (CCD, laser or CMOS) is utilized to read at least a portion of a dataform to provide electrical signals representative of the scanned portion; a display for displaying of a visual representation of the scanned portion (part or all) of the dataform; if the display shows the reading relationship to be satisfactory, decoding of the dataform is activated by the operator or by the decoder automatically; a determination is automatically made as to the type of dataform (e.g., matrix code 66 or bar code 68) represented by the pixel image data resulting from scanning of the dataform of interest; a decoder 36 is arranged to recognize pertinent characteristics of different dataforms of interest and thereby identify the particular type of dataform represented by the pixel image data at hand at any particular time; the decoder 36 is also equipped to apply the decoding protocol appropriate for the identified dataform type; the decoding is carried out using the protocol appropriate for the form of a particular type of dataform and in accordance with the design, coding and decoding characteristics and specifications associated with such dataform; and providing output signals representative of the entry data.

Wang et al disclose identifying the type of data using the pixel image, but fail to fairly suggest employing a header having an identifier in the code to identify the type of data encoded in the code symbol.

See Fukuda above.

In view of Fukuda's teachings, it would have been obvious for a person of ordinary skill in the art at the time the invention was made to modify the teachings of Wang et al to include a header portion in the code symbol for identifying the type of code/data encoded. Such modification would enhance the decoding process by accurately identifying the type of code or data encoded. Once the type of code is determined, appropriate action could take to improve the reader performance so as to decode the encoded data with greater accuracy. With respect to the data being a ring tone data or audio type of data, this is merely a recitation of the intended use. The is no structural difference between the claimed invention and the prior art, it is not patentably distinguish from the prior art. The prior art structure is capable of performing the intended use. And with respect to the terminal being a cellular phone, such specific limitation is for meeting specific customer requirement. An artisan would have been motivated to integrate the scanner into a cellular phone in order to process audio/ring tone data (see Daisuke previously applied to the claims). Therefore, the modification would have been an obvious extension as taught by the Wang et al.

Response to Arguments

6. Applicant's arguments filed 11/30/06 have been fully considered but they are not persuasive. See examiner's remarks.

REMARKS:

7. In response to applicant's arguments, the recitation "cellular phone" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

In addition the applicant argued that reading head of Fukuda et al do not meet the usual and customary definition of an imaging device because it does not perform any functions than an imaging device would perform, the examiner respectfully disagrees. The reading head of Fukuda reads coded information in the header portion of the code data to identify the type of data, this function meets usual customary definition of an imaging device. The applicant defines "imaging" is: to create a visual representation of something. Merriam-Webster's definition is: "an optical counterpart or appearance of an object, as is produced by reflection from a mirror, refraction by a lens, or the passage of luminous rays through a small aperture and their reception on a surface." I believe Fukuda's teachings is inline with this definition.

The applicant further argued that Fukuda fails to disclose a data-identifying unit, the examiner respectfully disagrees. Fukuda teaches a reproduction apparatus for analyzing the header of each pack to identify the attribute of the pack. Once the type of data is identified in the pack, the data is reproduced according to specific format required by the type of data in the pack. (see col. 6, line 24+). The data identifier is encoded in the header portion of the encoded data.

While the usage of the prior art and the application is different, the prior of record meets the claims' language as written.

8. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The applicant seems content to modify the Wang's teaching in view a limited aspect of the Fukuda's teaching while the it is clear that the suggested modification was based on the whole teaching of Fukuda. Regarding the claimed "ring tone", it is evident in the art that any type of audio data can be package into ring tone data. The applicant also argued that there is no evidence to support integration of a scanner into a cellular phone, the examiner disagrees. Previously submitted and argued prior art (Daisuke) has a cellular phone integrated with a scanner. The applicant's arguments are not persuasive. Refer to the rejection above.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

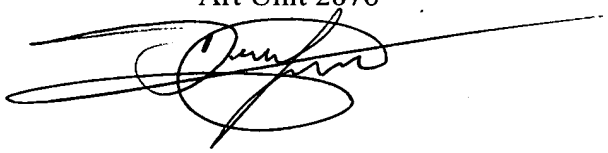
however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel St.Cyr whose telephone number is 571-272-2407. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on 571-272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Daniel St.Cyr
Primary Examiner
Art Unit 2876



DS
January 10, 2007